## CCRB INVESTIGATIVE RECOMMENDATION

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Investigator:		Team:		CCRB Case #:		Force		Discourt.		U.S.
Julian Phillips		Squad #5		201903682	V	Abuse		O.L.		Injury
Incident Date(s)		Location of 1	Incident:		P	recinct:	18	Mo. SOL	]	EO SOL
Saturday, 04/27/2019 11:48 PM						40	10	/27/2020	6	5/13/2021
Date/Time CV Reported		CV Reported	l At:	How CV Reported:		Date/Time	e Rece	ived at CCl	RB	
Tue, 04/30/2019 9:36 AM		CCRB		Phone		Tue, 04/30	0/2019	9:36 AM		
Complainant/Victim	Type	Но	me Addre	ss						
Witness(es)		Ho	me Addre	ss						
Subject Officer(s)	Shield	Tax	xID	Command						
1. SGT Natalie Bautista	01127	926	5408	PSA 7						
2. LT Eric Dym	00000		3762	PSA 7						
3. POM Jose Tejada	06150		0018	PSA 7						
4. POM Lorvin Fernandez	09421	956	5643	PSA 7						
Officer(s)	Allegation	on				Inve	estiga	tor Recon	nme	ndation
A . SGT Natalie Bautista	Abuse of individua		ergeant Nat	talie Bautista stoppe	d ar	n A.	§ 87(	2)(g)		1
B . LT Eric Dym	Abuse of individua		ieutenant E	cric Dym stopped an		В.	§ 87(	2)(g)		l
C . POM Lorvin Fernandez		Authority: Pon individual.	olice Office	er Lorvin Fernandez		C .	§ 87(	2)(g)		ĺ
D . POM Jose Tejada	Abuse of individua		olice Office	er Jose Tejada stopp	ed a	n D.	§ 87(	(2)(g)		İ
E . SGT Natalie Bautista			ergeant Nato to the hospi	talie Bautista threate tal.	ened	to E.	§ 87(	2)(g)		
F. LT Eric Dym	Abuse of remove		ieutenant E o the hospi	cric Dym threatened tal.	to	F.	§ 87(	2)(g)		
G . SGT Natalie Bautista	Abuse of arrest	Authority: Se	ergeant Nat	talie Bautista threate	ened	to G.	§ 87(	(2)(g)		
H . LT Eric Dym	Abuse of		ieutenant E recording	Cric Dym interfered device.	with	н.	§ 87(	2)(g)		
I . SGT Natalie Bautista	Abuse of summon		ergeant Nat	talie Bautista issued	a	Ι.	87(2	2)(g)		
J. LT Eric Dym	Abuse of to	Authority: Li	ieutenant E	cric Dym issued a su	mm	ons J.	§ 87(2	2)(g)		
K . SGT Natalie Bautista		provided a fal		ng Sergeant Natalie statement in violation			§ 87(	2)(g)		

## **Case Summary**

On April 30, 2019, \$87(2)(b) filed this complaint with the CCRB via telephone.

As detailed in CCRB case #201903287, on April 16, 2019, Lieutenant Eric Dym and Sergeant Natalie Bautista of Police Service Area 7 stopped \*87(2)(5) on suspicion of possessing a weapon, and ultimately transported him to the stationhouse and issued him a summons for disorderly conduct.

On April 27, 2019, at approximately 11:48 p.m., on in the Bronx, Sgt. Bautista, Lt. Dym, Police Officer Lorvin Fernandez, and Police Officer Jose Tejada, all of PSA7, stopped an unidentified man (Allegations A-D: Abuse of Authority, \$87(2)(q) approached Lt. Dym and Sgt. Bautista to complain about their actions in the prior incident described above, to tell them that he had filed a complaint against them, and to film them with his cellphone. Sgt. Bautista and Lt. Dym made remarks to §87(2)(b) that allegedly constituted threats to forcibly hospitalize § 87(2)(b) (Allegations E-F: Abuse of Authority, ). Sgt. Bautista threatened to arrest §87(2)(b) (Allegation G: Abuse of Authority, 887(2)(g) ). Lt. Dym attempted to stop 887(2)(b) from filming the officers (Allegation H: Abuse of Authority 8 87(2)(g) ). Sgt. Bautista and Lt. Dym handcuffed 887(2)(b) transported him to the PSA7 stationhouse, and directed PO Tejada to issue him a summons for disorderly conduct (Allegations I-J: Abuse of Authority, § 87(2)(0) ). The summons was ultimately dismissed in court.

The investigation obtained eight BWC videos (**Board Reviews 01-08**) and one cellphone video (**Board Review 09**) capturing this incident. The investigation also recovered surveillance footage from nearby NYCHA buildings, but this footage did not capture any portion of the incident (**Board Reviews 10-13**). All references to video evidence below refer to the time stamp in the video player, not the on-screen clock embedded in the footage.

## **Findings and Recommendations**

Allegation (A) Abuse of Authority: Sergeant Natalie Bautista stopped \$87(2)(6)
Allegation (B) Abuse of Authority: Lieutenant Eric Dym stopped \$87(2)(6)
Allegation (C) Abuse of Authority: Police Officer Lorvin Fernandez stopped 887(2)(b)
Allegation (D) Abuse of Authority: Police Officer Jose Tejada stopped §87(2)(b)
testified ( <b>Board Review 14</b> ) that he was walking with his brother, [87(2)(5)] when he observed Sgt. Bautista, Lt. Dym, PO Fernandez, and PO Tejada, standing around a black man, who was standing with his back against a parked vehicle and with his hands raised. [87(2)(5)] could not identify this man. [87(2)(5)] did not hear any conversation between the officer and the man, and he did not witness the officers make any physical contact with the man.
provided a telephone statement to the CCRB ( <b>Board Review 15</b> ) but was not cooperative in providing a verified statement. §87(2)(6) reported that he saw Sgt. Bautista, Lt Dym, PO Fernandez, and PO Tejada standing around the man, but could not see if the officers made any physical contact with the man. §87(2)(6) could not identify the man.

Lt. Dym's BWC footage (**Board Review 01**) captures a few seconds of a stop of an unidentified man. As Lt. Dym arrives on the scene, at 00:14, Sgt. Bautista and PO Tejada are standing around PO Fernandez and the man. PO Fernandez pats down the man's coat and removes items from his pockets before the video ends.

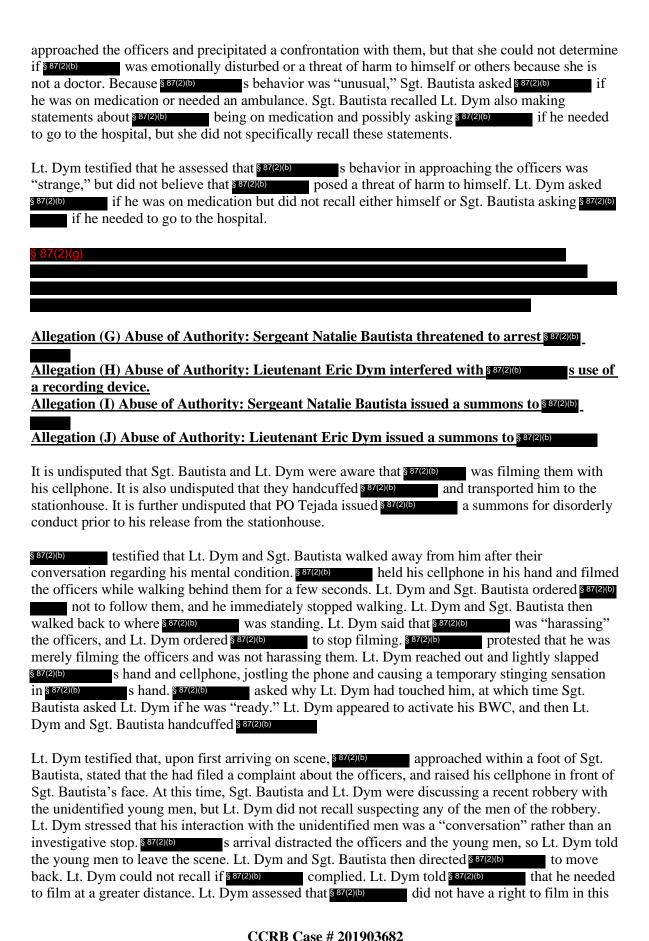
The investigation was unable to identify or establish contact with the victim. The officers did not

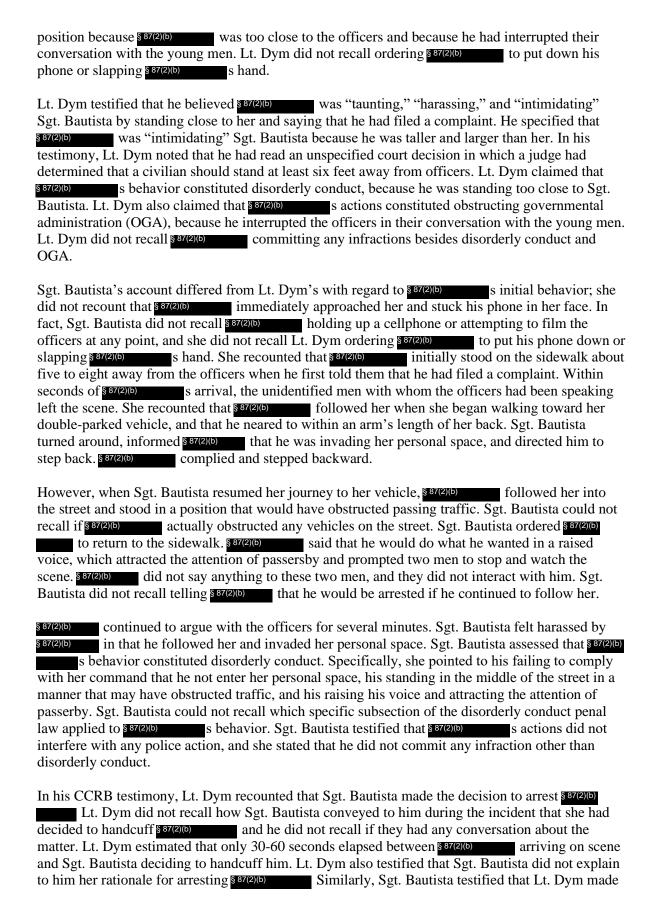
prepare a Stop Report documenting the interaction (**Board Review 16**), and none of the officers recorded any information about the stop in her or his memo book (**Board Reviews 17-20**). The investigation reviewed lists of warrant checks conducted by all of the officers on the date of the incident. PO Fernandez conducted a warrant check for **STOP** named "approximately ten minutes prior to this incident (**Board Review 21**), but the investigation was unable to locate contact information for anyone by that name.

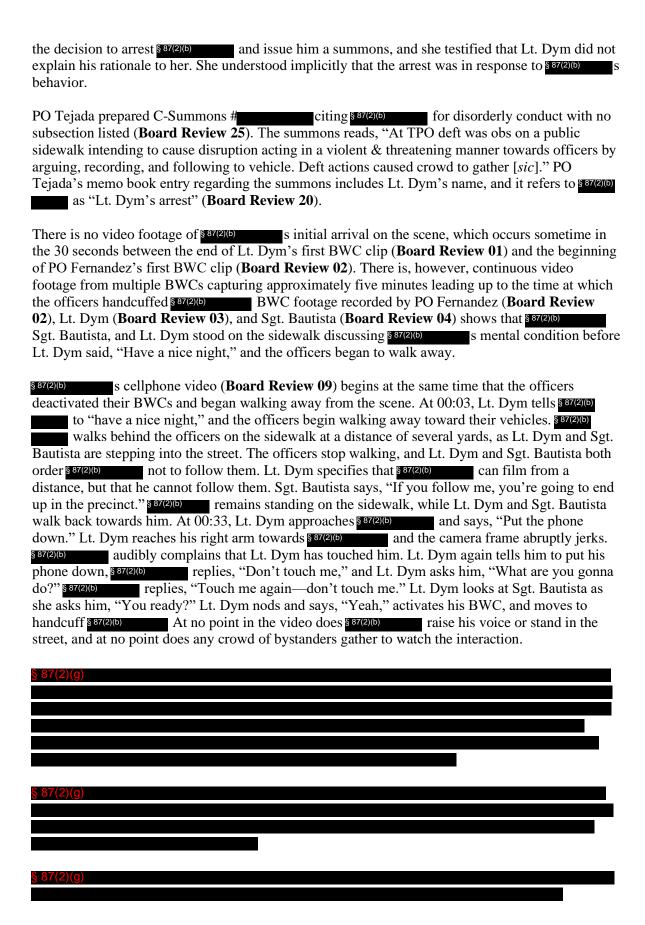
Sgt. Bautista testified (**Board Review 22**) that the officers were speaking to a group of unidentified men about basketball and recent crimes in the neighborhood. The officers may have suspected one of the men of something, but Sgt. Bautista denied the officers stopped any of the men and did not recall the officers frisking any of the men. When shown the video footage discussed above, Sgt. Bautista stated that the video refreshed her recollection that, while she and Lt. Dym were speaking to the group of unidentified men, PO Fernandez and PO Tejada had approached an unrelated man, whom Sgt. Bautista could not identify, because the man resembled (SST(2)) on a wanted poster. Sgt. Bautista denied witnessing PO Fernandez and PO Tejada's interaction with this man.

Lt. Dym testified (**Board Review 23**) that he and Sgt. Bautista were speaking to a group of unidentified men about a robbery that had recently occurred, but he did not recall the officers stopping, frisking, or searching any of the men. Lt. Dym stated that there were other officers in the vicinity, but he did not specifically recall PO Fernandez or PO Tejada being on scene. When shown the video footage discussed above, Lt. Dym affirmed that the video captured an unrelated incident that had occurred earlier that evening.

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§ 87(2)(g)
Allegation (E) Abuse of Authority: Sergeant Natalie Bautista threatened to remove 887(2)(b)
to the hospital.
Allegation (F) Abuse of Authority: Lieutenant Eric Dym threatened to remove \$87(2)(b)
the hospital.
Body worn camera footage recorded by Sgt. Bautista (Board Review 04) and Lt. Dym (Board
Review 05) captures this portion of the incident, beginning at 02:10. Lt. Dym asks §87(2)(b) if
he is "emotionally disturbed" and states that it is strange for \$87(2)(b) to approach the officers
and ask for their names. Sgt. Bautista chimes in and asks \$87(2)(6) if he needs an ambulance
and if he is on medication. § 87(2)(b) responds by asking the officers, "Are you okay?" and "Is
your mother on medication?"
·
testified that, after he approached and began filming the officers, he spoke to Sgt.
Bautista and Lt. Dym for approximately 30 seconds. The officers asked \$87(2)(b) why he was
filming, \$87(2)(b) stated that he was permitted to do so, and Lt. Dym asked \$87(2)(b) to step
across the street. Lt. Dym then asked \$87(2)(6) if he was on medication or needed to go to the
hospital for mental health treatment. Lt. Dym's remarks bothered \$87(2)(6) because he knew
that, if an officer labeled someone as "crazy," that person would be forcibly hospitalized.
that, if all officer faceled someone as "crazy," that person would be foreforty hospitalized.
reported that Lt. Dym asked \$87(2)(b) if he was crazy and if he wanted to go to
the hospital.
the nospital.
Sgt. Bautista testified that she assessed that § 87(2)(b) s behavior was "unusual" in that he
sgi. Dautista testificu tifat siic assessed tifat sociologia sociavioi was uffusual ili tifat fic







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As noted above, Lt. Dym and Sgt. Bautista each claimed that the other bore responsibility for the decision to issue the summons to They are both supervisory officers, and they both testified that they believed had committed disorderly conduct. In addition, the video footage shows that they briefly conferred with one another immediately prior to making the decision to handcuff 887(2)(b) As a result, the investigation pleaded the improper summons allegation against both Lt. Dym and Sgt. Bautista.

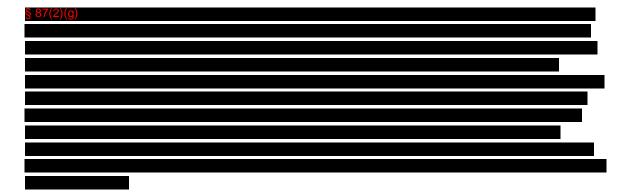
NYPD Patrol Guide Procedure 203-29 (**Board Review 24**) states that members of the public have the right to lawfully record police activity, including detentions and searches, on public streets and sidewalks. This right can be limited when the person filming violates the law, or when it is necessary to ensure the safety of officers or other members of the public. Absent sufficient grounds, officers must not threaten, intimidate, or otherwise discourage a bystander from filming police activity, and they must not intentionally block or obstruct cameras when there is no legitimate law enforcement reason to do so. Absent additional actions constituting a violation of the law,

same cannot be arrested for filming officers, requesting or making note of officers' names and shield numbers, criticizing or objecting to police activity, refusing to leave the area, or using crude or vulgar speech.

A person is guilty of obstructing governmental administration in the second degree when he prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force, or interference (**Board Review 26**). The official function being obstructed must be precisely specified. While various law enforcement actions, including "buy and bust" operations and the preparation of summonses, constitute official functions under the statute, an officer is not considered to be performing an official function simply by nature of being on patrol. People v Lawrence, 59 Misc. 3d 215 (Kings Country Criminal Court 2018) (**Board Review 27**); In re Davan L., 91 N.Y.2d 88 (Court of Appeals 1997) (**Board Review 28**); People v. Joseph, 156 Misc. 2d 192 (Kings Country Criminal Court 1991) (**Board Review 29**).

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he commits acts including engaging in violent, tumultuous or threatening behavior, or obstructing vehicular traffic (**Board Review 30**).

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## Allegation (K) Other Misconduct: There is evidence suggesting Sergeant Natalie Bautista provided a false official statement in violation of PG 203-08.

The CCRB recommends that the NYPD conduct further investigation because there is evidence suggesting that Sgt. Bautista provided a false official statement.

As discussed above, officers' BWC footage (**Board Review 02-04**) and §87(2)(6) s cellphone footage (**Board Review 09**) document that §87(2)(6) s interaction with Sgt. Bautista took place on the sidewalk.

The following verbatim exchange occurred between 13:40 and 15:25 in Sgt. Bautista's CCRB interview:

**Inv. Phillips**: At what point did he start getting loud?

**Sgt. Bautista**: When he was told several times to back, because we're in the street now. We told him to go back on the sidewalk and now he starts talking and he's upset and he's riled up and his brother comes over.

**Inv. Phillips**: Okay, so if I'm understanding you correctly in the chain of events: you're walking, you ask him to step back, he steps back, then you continue to your car. He follows you, he follows you all the way into the street, and that's when he gets upset, gets riled up?

**Sgt. Bautista**: No, afterwards, when we tell him to get on the sidewalk, go home.

**Inv. Phillips**: Is he standing in the street at this point?

Sgt. Bautista: Yes.

**Inv. Phillips**: Is he obstructing traffic?

Sgt. Bautista: Yes.

Upon reviewing the above-mentioned cellphone footage, which captures the portion of the incident in which Sgt. Bautista begins walking to her vehicle before stopping to chastise \$87(2)(b) for following her, Sgt. Bautista affirmed that this footage began after \$87(2)(b) followed her into the street and did not alter her previous testimony. Sgt. Bautista did not offer any other explanation for the discrepancy between her testimony and the video footage, and she did not dispute the contents of the video footage.

According to NYPD Patrol Guide Procedure 203-08 (Board Review 34), the "intentional making of a false official statement is prohibited, and will be subject to disciplinary action, up to and including dismissal. Intentionally making a false official statement regarding a material matter will result in dismissal from the Department, absent exceptional circumstances."

§ 87(2)(g)		

87	7(2)(g)
Q-	Civilian and Officer CCRB Histories
01	/(2)(b)
nc _t.	egations are still pending investigation. In addition, Sgt. Bautista is a subject in four CCRB cd 17 allegations for complaints filed after the complaint discussed in this report. § 87(2)(g)  Dym has been a member of the NYPD for 16 years and has been a subject in 20 prior CCRE es and 53 allegations, of which five were substantiated:  201114190 involved a substantiated allegation of stop of person against Lt. Dym. The Boar recommended a Command Discipline, but the NYPD imposed no discipline due to the statu of limitations.  201804541 involved a substantiated allegation of discourtesy against Lt. Dym. The Board recommended Command Discipline A, and the NYPD imposed Instructions.
)	201810625 involved substantiated allegations of property damage and discourtesy against I Dym. The Board recommended Formalized Training, and the NYPD imposed Command L Instructions.
)	201900061 involved a substantiated allegation of entry of premises against Lt. Dym. The B recommended Command Level Instructions, and the NYPD imposed Formalized Training.
87	7(2)(g)
	Mediation, Civil and Criminal Histories
<b>A</b> s	is complaint was not suitable for mediation. of February 25, 2020, the New York City Office of the Comptroller has no record of a Notice that the desired implication is not suitable for mediation.
	7(2)(b)

Squad No.:	5		
Investigator:	Julian Phillips Signature	SI Julian Phillips Print Title & Name	September 30, 2020 Date
Squad Leader: <sub>.</sub>	Daniel Giansante Signature	IM Daniel Giansante Print Title & Name	September 30, 2020 Date
Reviewer:	Signature	Print Title & Name	 Date